Filed 6/16/16 Marriage of Wicks and Zeghuzi CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re the Marriage of DIANE M. WICKS and HADI ZEGHUZI.	
DIANE M. WICKS, Respondent, v. HADI ZEGHUZI, Appellant.	A144474 (Contra Costa County Super. Ct. No. MSD11-01157)

Hadi Zeghuzi (Husband) appeals following judgment in this marriage dissolution action. He challenges certain aspects of the trial court's property distribution and the validity of a prenuptial agreement. We affirm.

BACKGROUND

Husband and Diane M. Wicks (Wife) married in November 1990. Shortly before their marriage, they signed a prenuptial agreement (the Agreement) electing for separate property characterization of all their premarital and postmarital property and income. The Agreement was executed in Arizona and, by its terms, is governed by the laws of Arizona.

Wife petitioned for dissolution in 2011.[1] Trial was held in September 2014 and included testimony from both Husband and Wife.[2] Following trial, the court issued judgment dissolving the marriage; denying Husband's request for spousal support; rejecting Husband's claim that the Agreement is invalid; denying Husband's claim for a portion of the parties' tax refunds for 2007-2009; and denying Husband's request for reimbursement for an addition Husband apparently began—but did not finish—building on a home purchased and owned by Wife. Husband filed a motion for a new trial, which the trial court denied. This appeal followed.

DISCUSSION

Husband challenges the trial court's orders regarding the validity of the Agreement, reimbursement for money spent on the addition to Wife's home, and the tax refunds.[3]

I. *Standard of Review*

"We review factual findings of the family court for substantial evidence, examining the evidence in the light most favorable to the prevailing party. [Citation.] In reviewing evidence on appeal, all conflicts must be resolved in favor of the prevailing party, and all legitimate and reasonable inferences must be indulged in order to uphold the trial court's finding." (*In re Marriage of Hill and Dittmer* (2011) 202 Cal.App.4th 1046, 1051.) For challenges to discretionary rulings, " ' "[t]he burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power." ' " (*Rich v. Thatcher* (2011) 200 Cal.App.4th 1176, 1182.) "We interpret a written instrument de

[1] The parties have one child, who was no longer a minor at the time judgment issued. There are no issues relating to the child on appeal.

[2] The trial was not reported.

[3] These challenges were also the basis of Husband's motion for a new trial. To the extent Husband separately challenges the trial court's denial of his motion for a new trial, we reject this challenge for the reasons discussed below.

novo unless there is an issue of fact or credibility raised by extrinsic evidence." (*In re Marriage of Kelkar* (2014) 229 Cal.App.4th 833, 845.)

II. *Validity of the Agreement*

Husband argues the Agreement is invalid under Arizona law. He quotes an Arizona case providing that the party seeking to enforce a prenuptial agreement executed prior to 1991 must prove "that the agreement was fairly reached and that enforcement of the spousal maintenance provision will not 'render one spouse without a means of reasonable support or a public charge, either because of a lack of property resources or a condition of unemployability.' " (*Hrudka v. Hrudka* (Ariz.Ct.App. 1995) 919 P.2d 179, 185.)

Husband contends the trial court assumed the validity of the Agreement had been resolved at earlier trials in the dissolution proceeding, but cites no record support for this contention. The judgment states: "The Prenuptial Agreement is confirmed as valid." The 2014 trial was not reported and Husband has not provided us with an agreed or settled statement. (See Cal. Rules of Court, rule 8.120(b).) "[A] judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. . . . ' "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented." ' " (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 (*Foust*).) Accordingly, "[w]here no reporter's transcript [or suitable substitute] has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.) Husband has not shown the trial court failed to resolve the validity of the Agreement. He also has not shown Wife failed to prove the Agreement valid at trial. Accordingly, he has not shown the trial court's ruling was in error.[4]

[4] It is unclear whether Husband's challenge to the Agreement's validity is ultimately targeting the trial court's denial of spousal support. Wife notes that in 2012, the trial court issued an order denying spousal support, and argues Husband cannot now challenge this order. To the extent Husband is challenging the denial of spousal support, he appears

III. *Reimbursement For Addition To Wife's Home*

Husband contends he is entitled to reimbursement under Family Code section 2640, which provides: "A party shall be reimbursed for the party's separate property contributions to the acquisition of property of the other spouse's separate property estate during the marriage . . . ." (Fam. Code, § 2640, subd. (c); see also *id*., subd. (a) [" '[c]ontributions to the acquisition of property' " includes "payments for improvements"].) According to the minutes from the trial, the court denied Husband's request for reimbursement for the addition to the Wife's home because "the court does not have sufficient evidence to make a finding that [Husband] is due money for the addition on the property." (Capitalization altered.)

On appeal, Husband argues it is undisputed that his separate property paid for the addition. Wife does not appear to challenge this contention. There remains the question of the amount of reimbursement. Husband points to two pieces of evidence in the record. First, an appraiser's determination that the "current construction cost to date" of the addition is $179,700. Second, what is apparently a contractor's estimate that the cost of building the entire addition according to plans is $449,990. However, the record also includes the appraiser's determination that there "could not be any value attributed to the unfinished added structure," and in fact "the unfinished area could potentially have a negative effect on the value." "[T]he proper amount of reimbursement is not necessarily the amount . . . paid for the improvements made . . . . because the property may not have increased in value at all or any increase attributable to the improvements may have been slight in comparison to the amount paid for them." (*In re Marriage of Reilley* (1987) 196 Cal.App.3d 1119, 1123.) There is substantial evidence that the unfinished addition did not add value to Wife's home. Husband has not shown the trial court erred by denying reimbursement in connection with the addition.

---

to be challenging the ruling from 2014, not 2012. In any event, we reject the challenge for the reasons set forth above.

IV. *Tax Refunds*

The trial minutes provide: "Regarding [Husband's] portion of the '07, '08 and '09 tax refunds, the court finds that [Husband] did not pay taxes during those years and pursuant to the prenuptial agreement [Husband] is not due a portion of the refund." The relevant portion of the Agreement appears in a section entitled "Income Tax Returns" (capitalization altered and underlining omitted) and provides: "The parties agree to file either separate or joint income tax returns during their marriage, whichever method of filing will produce the least amount of aggregate tax. In the event the parties file a joint return, each party shall be responsible for paying his or her portion of the tax due in the same proportion as that party's income, earnings, gain or other items subject to taxation bear to the total income, gain, earnings or other items subject to taxation of the parties. All refunds shall be divided between the parties in the same manner."

Husband does not dispute that he paid no income tax during the relevant period. He argues that certain expenses related to his separate real property reduced Wife's income tax obligation, and that because he paid *property* taxes for this property he is entitled to a portion of the income tax refund. We disagree. The Agreement provides that refunds shall be divided between the parties according to their respective *income* tax obligation. Husband has not shown he owed any income tax during the relevant years. (*Foust, supra,* 198 Cal.App.4th at p. 187.) We affirm the trial court's determination that Husband is not entitled to any portion of the parties' tax refunds.

DISPOSITION

The judgment is affirmed. Respondent is awarded her costs on appeal.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.

(A144474)